# STATE OF MICHIGAN

# COURT OF APPEALS

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In the Matter of S.R.G., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DOUGLAS D. GIBBONS,

Respondent-Appellant,

and

SONSERRIA DANIELLE GIBBONS, a/k/a SONSERRIA DANIELLE COATES,

Respondent.

UNPUBLISHED
April 15, 2003

No. 242024
Wayne Circuit Court
Family Division
LC No. 97-361436

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

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SONSERRIA DANIELLE GIBBONS, a/k/a SONSERRIA DANIELLE COATES,

Respondent-Appellant,

and

DOUGLAS D. GIBBONS,

Respondent.

No. 242078
Wayne Circuit Court
Family Division
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Before: Meter, P.J., and Cavanagh and Cooper, JJ.

MEMORANDUM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to their minor child under MCL 712A.19b(3)(j) and (as to respondent-mother only) MCL 712A.19b(3)(1). Although the trial court's decision to terminate respondents' parental rights was supported by the evidence, we conditionally affirm and remand this case because it is not apparent whether the trial court provided notice of these proceedings to any interested Indian tribe, as required by the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, and by the Michigan court rules.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. See MCR 5.974(I) and *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (explaining the standard of review). The record is clear that respondent-mother previously had her parental rights to three other children terminated on the basis of physical abuse and neglect and that, while she had made some improvement since that time, she still was unable to provide for the nurturance and safety of her minor child. Thus, there was sufficient evidence for the court to conclude that there was a reasonable likelihood of harm to the minor child if returned to her custody.

Regarding respondent-father, the record demonstrates that he was a co-caretaker at the time respondent-mother's children were removed and her parental rights to them terminated, that he was aware of their abuse and neglect, and that he did nothing to intervene. Further, the record demonstrates that, despite his improvement since that time, he too is unable to provide for the nurturance and safety of the minor child. Thus, as with respondent-mother, there was sufficient evidence for the court to conclude that there was a reasonable likelihood of harm to the minor child if returned to respondent-father's custody.

Further, there was no evidence indicating that termination of the parental rights of either respondent would clearly not be in the child's best interests. See MCL 712A.19b(5) and *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondents' parental rights to their minor child.

However, we note that respondent-mother informed the trial court that she was a member of the Cherokee tribe at the preliminary hearing. There is no record that the trial court provided the notice required by the ICWA and by MCR 5.965(B)(7) and 5.980(A)(2), which is meant to protect not only the respondents but, more importantly, the interests of the child and the tribe. See, generally, *In re Eim*, 233 Mich App 438; 592 NW2d 751 (1999) (discussing the notice requirement). We therefore conditionally affirm the order terminating respondents' parental rights but remand for the purpose of providing proper notice to any interested Indian tribe as required by court rule and statute. See *id.* at 450.

Conditionally affirmed but remanded for further proceedings. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper